



POLICE DEPARTMENT  
NEW YORK, N.Y. 10038  
DEPUTY COMMISSIONER-TRIALS

August 1, 2016

-----X  
In the Matter of the Disciplinary Proceedings :  
- against - : FINAL  
Police Officer Joel Edouard : ORDER  
Tax Registry No. 941696 : OF  
Property Clerk Division : DISMISSAL  
-----X

Police Officer Joel Edouard, Tax Registry No. 941696, Shield No. 24576, Social Security No. [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2015-13118, as set forth on form P.D. 468-121, dated February 6, 2015, and after a review of the entire record, has been found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Joel Edouard from the Police Service of the City of New York.

  
WILLIAM J. BRATTON  
POLICE COMMISSIONER

EFFECTIVE: 0001 hrs. August 8, 2016



POLICE DEPARTMENT  
NEW YORK, N.Y. 10038  
DEPUTY COMMISSIONER-TRIALS

-----X  
In the Matter of the Charges and Specifications : Case No.  
- against - : 2015-13118  
Police Officer Joel Edouard :  
Tax Registry No. 941696 :  
Property Clerk Division :  
-----X

At: Police Headquarters  
One Police Plaza  
New York, New York 10038

Before: Honorable Rosemarie Maldonado  
Deputy Commissioner Trials

APPEARANCE:

For the Department: Jordan Farnham Esq. & Beth Douglas, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, New York 10038

For Respondent: Anthony Ricco, Esq.  
20 Vesey Street, Room 400  
New York, New York 10007

To:

HONORABLE WILLIAM J. BRATTON  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

**Charges and Specifications:**

1. Said Police Officer Joel Edouard, assigned to 81st Precinct, on or about July 23, 2014, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Edouard, while on duty, did wrongfully engage in a physical altercation with a person known to the Department.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

**REPORT AND RECOMMENDATION**

The above-named member of the Department appeared before me on July 11 and 12, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. The Department called Jahmi-El Cuffee, Police Officer Christopher Koenke and Sergeant Amy Morin as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

**DECISION**

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of the charged misconduct.

**FINDINGS AND ANALYSIS**

The following facts are undisputed. On July 23, 2014, Respondent and his partner, Officer Franky Joseph were performing patrol duties within the confines of the 81 Precinct in Brooklyn. (Tr. 184-186) At approximately 1900 hours, the officers observed Jahmi-El Cuffee sitting on a fish tank on the sidewalk along Malcolm X Boulevard rolling a marijuana cigarette and drinking alcohol with an acquaintance named Jimbo and another unidentified male. Cuffee noticed the officers and threw the illegal substance to the ground. Respondent and Officer Joseph pulled over, exited the RMP and approached the three males. (Tr. 20-23, 25-27, 186-187)

As requested, Cuffee produced identification. However, when Respondent asked him to stand to handcuff him, Cuffee resisted and knocked Respondent's handcuffs to the ground. (Tr. 27, 29-30, 188-192) At trial, Cuffee admitted that he fought the officers because, although he had disposed of the marijuana cigarette, he was also carrying marijuana in his pants. In fact, as he tussled with the officers, Cuffee was able to hand over that illegal substance to Jimbo, who then left the scene. (Tr. 30-32, 62, 191, 193)

Cuffee fought the officers as he yelled, "I didn't do anything." (Tr. 33) Respondent called for hackup as all three became entangled and eventually fell to the ground. Cuffee appealed to the growing crowd for help. A chaotic scene ensued as about 30 bystanders gathered. (Tr. 32-34, 124, 194-195) Respondent briefly removed his firearm as he struggled with Cuffee. (Tr. 32-33, 197-198; Dept. Ex. 9)

Soon thereafter, additional officers arrived on the scene, including Officer Christopher Koenke. (Tr. 35-36, 123-124) Officer Koenke took Respondent's position around Cuffee's legs, allowing Respondent to stand. (Tr. 125, 200-201) Respondent retrieved his handcuffs from the sidewalk and briefly walked up the block in an apparent effort to locate Jimbo. He then walked back toward Cuffee and the officers. Three officers were on Cuffee as he lay in a prone position continuing to resist arrest. Respondent observed that Cuffee's right hand was cuffed but his left arm was still free. Respondent then lifted his right leg and stomped down on Cuffee. (Tr. 36, 203-204) Video footage of the incident was taken by Gary Dormer. (Dept. Exs. 2, 8)

Cuffee was brought to the 81 Precinct and charged with tampering with evidence, resisting arrest, and disorderly conduct. (Tr. 40-41, 45) The Medical Treatment of Prisoner Form filled out by the precinct notes: "Prisoner complaining of pain. Sustained

injuries to head, (r) shoulder, (l) elbow and (l) knee while resisting arrest by NYPD....” (Tr. 151-153; Dept. Ex. 6) Thereafter, Cuffee was taken to [REDACTED] where he complained of “pain to head and back” and other areas of his body after “fighting with police.” The Physical Exam section of the hospital report noted “no evidence of head and neck injuries.” The Assessment/Plan section of the hospital report, however, documented a “scalp contusion” as well as “right shoulder, left elbow & knee abrasions.” (Tr. 154-155, 171-172; Dept. Ex. 3) A photograph of Cuffee’s head, which was allegedly taken by his Legal Aid attorney, was entered into evidence. (Tr. 43; Dep. Ex. 1)

After being discharged from [REDACTED] at 0058 hours on July 24, 2014, Cuffee was taken to Central Booking where he was photographed, arraigned and released from custody. The charges against him were eventually dismissed. (Tr. 41-42, 45, 56; Resp. Ex. ZZ) Upon his release, Cuffee viewed a video of his arrest that had been posted online. (Tr. 46, 148; Dept. Ex. 2)

Cuffee visited [REDACTED] on July 26, 2014, complaining of, “headaches, dizziness and nausea.” Medical records include his statement that he had been “arrested and kicked in the head” days earlier. The physical examination revealed a “superficial abrasion to left side of head” and the triage assessment documents that an “abrasion noted to the lt side of forehead and rt side of head.” According to the records, he was in “no acute distress” at the time. (Tr. 51-52, 157; Dept. Ex. 4)

Cuffee spoke to the press about his arrest on July 26, 2014. He also appeared on “The Last Word with Lawrence O’Donnell.” He admits that during this television appearance he falsely told O’Donnell that he was not in possession of marijuana when Respondent stopped him. (Tr. 57-58, 115; Resp. Exs. AA, LL) Cuffee subsequently filed

a civil lawsuit against the Department in which he admittedly filed a Notice of Claim containing false statements. Cuffee settled that lawsuit for \$144,000. (Tr. 55; Resp. Ex. MM)

On April 29, 2016, following a bench trial, the Honorable Alan Marrus, Supreme Court, Kings County, found Respondent guilty of assault in the third degree – a Class A misdemeanor. Judge Marrus later sentenced Respondent to a term of two years probation with a “special condition” that Respondent resign or be fired from the NYPD. (Tr. 160; Dept. Ex. 7; Court Exs. 2, 3)

Here, Respondent stands charged with wrongfully engaging in a physical altercation with Cuffee. Patrol Guide Section 203-11 imposes the standard to be followed when force is necessary to achieve legitimate police goals. It mandates that members of service “at the scene of a police incident” use the “minimum necessary force.” Additionally, whenever it becomes “necessary to take a violent or resisting subject into custody,” responding officers should utilize appropriate tactics in a coordinated effort to overcome resistance.

Despite the broad language of the charge, at trial the Department Advocate did not challenge most of the force used to restrain this resisting suspect. Instead, the focus was on whether Respondent wrongfully stomped on Cuffee’s head. Thus, the instant charge centers on the same conduct that resulted in Respondent’s criminal conviction for assault in the third degree.

Pursuant to Penal Law 120.00(1), a person is guilty of assault in the third degree when “with intent to cause physical injury to another person, he causes such injury to

such person....” In his April 29, 2016, ruling, Judge Marrus made the following findings of fact:

The first question was whether or not the kick by Police Officer Edouard was an act that the officer reasonably believed to be necessary to effectuate the arrest of Mr. Cuffee. My answer is it was not. The prosecution has proved beyond a reasonable doubt that the kick occurred while Mr. Cuffee was lying on his belly under the control of other police officers. It was a sudden and gratuitous kick that appears to have... actually interfered with the other officers’ action. The second issue for me to resolve is was the kick to the head of Mr. Cuffee as he and other witnesses claimed or to Mr. Cuffee’s hand as Police Officer Edouard testified. My sense is that the prosecution has proved beyond a reasonable doubt that the kick was to Mr. Cuffee’s head. There is no evidence that Mr. Cuffee suffered any injury to his hand or complained of any pain there, and the final issue for me to resolve, did this kick actually cause physical injury to Mr. Cuffee’s head? My answer is yes. The prosecution has proved beyond a reasonable doubt that there was physical injury to the left side of Mr. Cuffee’s head by photographic and medical record evidence. (Court Ex. 3)

In short, there was a determination of guilt beyond a reasonable doubt in Supreme Court which is dispositive of the principal issue in dispute in this forum.

It is well established that a criminal conviction may be given collateral estoppel effect at a subsequent civil disciplinary proceeding which precludes relitigation of the issue of guilt. *Turco v. Monroe County Bar Association*, 554 F.2d 515 (2d Cir.), *cert denied*, 434 U.S. 834, 98 S. Ct. 122 (1977). To apply the doctrine of collateral estoppel to this proceeding, there must have been: (1) an identity of issues in the prior action which have been necessarily adjudicated, and (2) a full and fair opportunity for confrontation in the prior action. *Gilberg v. Barbieri*, 53 N.Y.S.2d 285 (1981). Given that these elements are not in dispute, the findings upon which Respondent’s criminal conviction are based are entitled to preclusive effect and will be undisturbed by this forum. *See Meades v. Spinnato*, 526 N.Y.S.2d 161 (2d Dep’t 1988); *Ryan v. New York Telephone Co.*, 62 N.Y.2d 494 (1984).

Although Respondent's guilt has been established, an exploration of the facts within the context of a disciplinary hearing is still necessary. This is consistent with the requirements of Public Officers Law Section 30(1)(e) which provides that a misdemeanor conviction is not grounds for automatic termination unless the underlying conduct shows a lack of moral integrity such as perjury or a violation of the oath of office. *Duffy v. Ward*, 81 N.Y 2d 127 (1993). As a result, Respondent was afforded a full Departmental trial in which evidence and witnesses were presented to explain the facts and circumstances relating to this disciplinary charge and Respondent's fitness for office. See *Disciplinary Case Nos. 71442/96; 69817/95* (December 30, 1997)

In his defense, Respondent testified that he walked away from Cuffee to see if he could find Jimbo. He could see that Cuffee was still resisting and turned back to the scene of the arrest. According to Respondent, Cuffee had "one hand . . . up with a handcuff, the right hand is up. The left hand . . . was underneath him . . . coming up..." from under his chest. He explained that as Cuffee's "left arm comes out" he "seize[d] the opportunity to . . . immobilize that hand" by stepping on it. (Tr. 201-07) He recalled Sergeant Franks motioning and saying something to him but could not recall the substance. He denied, however, that Franks pushed him back. Finally, Respondent asserted that his intent was to handcuff the suspect and "defuse the situation" and not to step on or kick Cuffee's head. (Tr. 207, 234, 260-61)

Respondent's version of events, however, was unpersuasive. First, this tribunal must acknowledge that Respondent has a very strong motive to present testimony that absolves him of misconduct inasmuch as a negative finding could put his job at risk.



Second, I assessed Respondent's demeanor at trial and found that he was not forthcoming with respect to material issues of fact. This credibility determination is supported by Respondent's evasive and inconsistent answers on critical points. For example, at his criminal trial Respondent testified that he had in fact stepped on Cuffee's hand. During his May 4, 2016, Departmental interview, Respondent contradicted himself and told investigators that his foot did not make contact with any part of Cuffee's body. At this Departmental hearing Respondent's testimony became suspiciously equivocal. During cross-examination he stated that he "did not know" whether his foot made contact with Cuffee's hand adding that he was "probably not successful." He later agreed that he did, in fact, step on Cuffee's hand but upon being asked to clarify the contradiction repeated that it was his "intention." (Tr. 254-55, 257-59) In short, Respondent's account of the charged misconduct seemed more self-serving than forthcoming. In addition, at trial Respondent showed little insight concerning the misuse of force in this case – a factor that seems to have tainted his account.

In making this finding I acknowledge that Cuffee is an admitted liar with a criminal record. It is especially troubling that he filed a notice of claim and received substantial compensation from the City of New York based, at least in part, on false statements made in the Notice of Claim that he signed and filed. (Tr. 75; Resp. Ex. MM) Cuffee's significant shortcomings as a witness, however, did not outweigh the evidence on which Respondent's claims were rejected.

The tribunal need not rely solely on conflicting and self-serving accounts. The video recording of this incident speaks largely for itself and, given the totality of circumstances, supports a finding that Respondent violated the Patrol Guide by stomping

on Cuffee's head. The recording captured the struggle with Cuffee. The relevant section of the footage is described in detail below:

- 1:16 minutes: Officer Koenke arrives and positions himself at Cuffee's feet.
- 1:22 minutes: Respondent walks away to retrieve his handcuffs from the sidewalk
- 1:29 minutes: Respondent touches Cuffee's right foot with his boot
- 1:30 minutes: Respondent walks up the block
- 1:36 minutes: Respondent looks into a doorway
- 1:38 minutes: Respondent turns back and walks by bystanders toward Cuffee
- 1:43 minutes: Respondent bends his right knee and lifts his right leg.  
Respondent's foot seems to be positioned directly above Cuffee's raised head.
- 1:44 minutes: (camera is partially blocked)  
The overall crowd reaction is to gasp and screaming in unison.  
Cuffee's head is near the ground and is then raised.  
Respondent is bent toward Cuffee.  
Sergeant Franks raises his hand toward Respondent's face and extends his arm as if to back him up.
- 1:48 minutes: Respondent walks away

(Tr. 127-129, 150, 209; Dept. Ex. 2 at 1:42-1:45)

Although the footage does not capture where Respondent's foot lands, given the sequence of events depicted, and the totality of circumstances, this is convincing evidence that Respondent intentionally stomped on Cuffee's head without police necessity. Accordingly, even if estoppel did not apply, the evidence presented at this disciplinary hearing was sufficient to make an independent determination that Respondent is guilty of the charged misconduct.<sup>1</sup>

#### PENALTY RECOMMENDATIONS

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<sup>1</sup> It is important to note that whether Cuffee was injured, or the extent to which he was injured, is not dispositive of this disciplinary case. Moreover, Respondent's claim that Cuffee faked his injuries was unpersuasive particularly given the head injury documented in the Medical Treatment of Prisoner Form, the head contusion noted in the Woodhull medical records and the observations of head injuries made by Interfaith's staff. Furthermore, the photographs of Cuffee entered into evidence were not clear enough to make a determination on this point, even when taking into account the arrest photo that was not before Judge Marnus when he made his finding of guilt.

In order to determine an appropriate penalty, Respondent's service record was examined. *See Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 10, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department Advocate argues that termination is the appropriate penalty for the charged misconduct. Given the particular circumstances of this case I agree. Officers are entitled to use appropriate means, including force, to apprehend criminals, compel compliance, exert control and protect themselves and others. The use of force, however, must be reasonable, proportionate and used only to achieve a legitimate police goal. Force itself may never be used as punishment. Doing so is antithetical to the high moral standards expected of police officers and to legitimate police conduct sanctioned by the NYPD and its Patrol Guide.

In this case, Respondent intentionally stomped on a suspect's head who was lying on the ground restrained by other officers. Although he had not yet been handcuffed, and had been resisting arrest, this was a particularly brutal and gratuitous kind of force. The crowd's spontaneous expression of shock as they witnessed Respondent's foot come down is telling. Likewise, Sergeant Franks' reaction to the stomping reveals the brutality of the force. Not only did Sergeant Franks put his hand up to Respondent's face signaling for him to desist, he gestured for Respondent to back away. Respondent complied and walked away from the scene. In sum, the sergeant's actions support this tribunal's finding that Respondent's wrongful use of force gravely violated accepted standards of the community.

Unfortunately, Respondent showed little insight concerning his misuse of force. Instead, he asserted a claim that was not believable and that revealed a troubling absence of recognition that he was at fault. The gratuitous nature of the assault, and Respondent's effort to evade all responsibility, are a sufficient basis to impose a penalty of termination. See *Disciplinary Case No. 5248/11* (January 8, 2016); *Disciplinary Case No. 10305/13* (April 14, 2016)

There is an additional aggravating factor in this case. Respondent was convicted of assault in the third degree and has been sentenced to two years probation. A criminal conviction of a uniformed member of service for *on duty* conduct is a rare event which is inimical to the best interests of the Department. It is especially troublesome when that criminal conviction is for the use of force – one of the most fundamental responsibilities of a member of service. Under these circumstances, I cannot responsibly recommend that Respondent continue to serve as a member of the Department. Accordingly, I recommend that Respondent be DISMISSED from the New York City Police Department.



Rosemarie Maldonado  
Deputy Commissioner Trials

**APPROVED**

AUG 08 2018  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER JOEL EDOUARD  
TAX REGISTRY NO. 941696  
DISCIPLINARY CASE NO. 2015-13118

Respondent was appointed to the Department on July 10, 2006. In his last three annual performance evaluations, he received a 3.5 rating of "Highly Competent/Competent" in 2015, a 4.5 rating of "Extremely Competent/Highly Competent" in 2014 and a 3.5 rating of "Highly Competent/Competent" in 2013. He has ten medals for Excellent Police Duty and three medals for Meritorious Police Duty.

Respondent has no prior formal disciplinary history. He has been on Level 2 Disciplinary Monitoring since February 4, 2015 as a result of this case [REDACTED]  
[REDACTED]

Rosemarie Maldonado  
Deputy Commissioner Trials